

ELLEN F. ROSENBLUM #753239
Attorney General
TIMOTHY D. SMITH #914374
Assistant Attorney General
Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
Telephone: (503) 934-4400
Facsimile: (503) 373-7067
E-mail: tim.smith@doj.state.or.us

Attorneys for State of Oregon

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

STATE OF OREGON, Acting by and through
the DEPARTMENT OF CORRECTIONS,

Plaintiff,

v.

NICHOLAS ADAM AMES,

Defendant.

Case No. 6:16-cv-345-TC

PLAINTIFF'S MOTION FOR ENTRY OF
DEFAULT JUDGMENT: PERMANENT
INJUNCTION

CONFERRAL

Pursuant to LR 7.1 (a)(1)(A), the undersigned counsel for Plaintiff hereby certifies that, Defendant Nicholas Adam Ames failed to appear or answer the complaint filed in this matter and the Court entered a default against Defendant on June 20, 2016. No opposition is anticipated.

MOTION FOR ENTRY OF DEFAULT JUDGMENT

The Court entered a default against Defendant on June 20, 2016. Dkt 6. Pursuant to FRCP 55 and 17 U.S.C. § 505, plaintiff, the State of Oregon, Acting by and through the Department of Corrections (the "State of Oregon") moves the Court for entry of judgment by default against Defendant Nicholas Adam. In support of this motion the State of Oregon relies upon the following memorandum, the Declaration of Timothy D. Smith in Support of Plaintiff's Motion for Entry of Default Judgment ("Smith Declaration"), and the record in this case.

Specifically, the State of Oregon moves the Court for entry of a Default Judgment and Order against Defendant permanently enjoining Defendant, Nicholas Adam Ames from directly or indirectly infringing the State of Oregon's rights under federal or state law in the video entitled "Prison Cell Extraction," <https://youtu.be/zQok8tROUFs>, (the "Video") and any work, whether now or in existence or later created, that is owned or controlled by the State of Oregon ('the State of Oregon's Works'), including without limitation by using the Internet or any online media distribution system to reproduce (i.e. download) any of the State of Oregon's Works, to distribute (i.e. upload) any of the State of Oregon's Works, or to make any of the State of Oregon's Works available for distribution to the public or for public display.

The State of Oregon intends to file separately for costs and attorney fees pursuant to FRCP 54.

MEMORANDUM

Once the Court enters a default against a party, all allegations other than damages are presumed to be true. *Geddes v. United Financial Group*, 559 F.2d 557, 560 (9th Cir. 1977) citing *Pope v. United States*, 323 U.S. 1, 12, (1944). As such, the allegations of the State of Oregon's complaint are deemed true and proven.

1. Defendant is not subject to the Servicemembers Civil Relief Act.

Defendant is not active in the military nor is he subject to the Servicemembers Civil Relief Act. 50 USC App. § 521. Dkt. 5.

2. The State of Oregon has proven copyright infringement.

To prevail on a copyright infringement claim a plaintiff must establish (1) ownership of a valid copyright and (2) copying of constituent elements of the work that are original. *Kelly v. Arriba Soft Corp.*, 336 F.3d 811, 817 (9th Cir. 2003). The State of Oregon's complaint, the allegations of which must be taken as true, establishes both of these elements. Dkt. 1, ¶¶ 9-23.

3. Defendant's conduct was willful.

Allegations that a defendant acted willfully are properly deemed to be true once the court enters a default. *Derek Andrew, Inc. v. Poof Apparel Corp.*, 528 F.3d 696, 702 (9th Cir. 2008). The admitted facts of this case dictate that the Defendant willfully infringed the State of Oregon's registered copyrights. Dkt.1, ¶¶ 9-23. Nothing short of filing an injunction is likely to alter the Defendant's infringing behavior.

4. The State of Oregon has suffered real harm.

The Video contains images illustrating the techniques that the Department of Corrections uses to remove a prisoner from a Department of Corrections' prison cell. Dkt. 1 at ¶ 9. By making the Department of Correction's security techniques public, Defendant has endangered the Department of Correction's management and administration of the Department of Corrections' institutions, parole and probation services, community corrections, and other functions related to state programs for corrections. As a result of Defendant's infringement of the State of Oregon's copyrights and exclusive rights under copyright, the State of Oregon has suffered an irreparable injury. Dkt. 1 at ¶ 22.

5. The State of Oregon seeks injunctive relief to prevent continued infringement.

The State of Oregon seeks and is entitled to an injunction pursuant to 17 U.S.C. § 501, et seq.. 17 U.S.C. § 502(a) authorizes an injunction to "prevent or restrain infringement of a copyright." Defendant by default has admitted to the willful conduct in this case. Based on Defendant's willful conduct, the State of Oregon asserts that an injunction is proper.

CONCLUSION

For the foregoing reasons, the State of Oregon moves this Court to enter a judgment enjoining Defendant, Nicholas Adam Ames from directly or indirectly infringing the State of Oregon's rights under federal or state law in the video entitled "Prison Cell Extraction," <https://youtu.be/zQok8tROUFs>, and any work, whether now or in existence or later created, that

is owned or controlled by the State of Oregon ('the State of Oregon's Works'), including without limitation by using the Internet or any online media distribution system to reproduce (i.e. download) any of the State of Oregon's Works, to distribute (i.e. upload) any of the State of Oregon's Works, or to make any of the State of Oregon's Works available for distribution to the public or for public display.

DATED: June 28, 2016.

ELLEN F. ROSENBLUM
Attorney General

s/ Timothy D. Smith
Timothy D. Smith, #914374
Assistant Attorney General
Of Attorneys for Plaintiff
E-mail: tim.smith@doj.state.or.us

CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2016, I served the foregoing Motion for Entry of Default Judgment upon the parties hereto by United States Postal Service, First Class Mail, postage prepaid, a true, exact and full copy thereof to:

Nicholas Adam Ames
320 14th Ave.
Albany, OR 97322

By: s/ Timothy D. Smith
Timothy D. Smith, #914374
Assistant Attorney General
Attorneys for Plaintiff